1 3 5 UNITED STATES DISTRICT COURT 6 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 7 8 MICHAEL JOHN WIGREN. 9 No. C07-75RSL 10 Plaintiff. v. 11 ORDER VACATING ORDER OF SNOHOMISH COUNTY CORRECTIONS, DISMISSAL AND ORDER DIRECTING SERVICE 12

Defendant.

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This matter comes before the Court *sua sponte*. On February 23, 2007, the Court granted plaintiff's motion to proceed *in forma pauperis* and entered plaintiff's Complaint. See Dkt. #5 (Order), Dkt. #6 (Complaint). As of September 7, 2007, plaintiff had not served defendant and therefore the Court ordered plaintiff to show cause by September 24, 2007 why this action should not be dismissed under Fed. R. Civ. P. 4. See Dkt. #6 (Order to Show Cause). Having received no response from plaintiff, on September 27, 2007, the Court entered an order of dismissal under Fed. R. Civ. P. 4(m) for failure to perfect service and summons. See Dkt. #11. On September 27, 2007, plaintiff responded to the order to show cause contending that he did not receive the order until September 24, 2007 because he is no longer at Snohomish County Jail but is now located at Spokane County Jail.

Based on plaintiff's response, the Court VACATES the "Order of Dismissal for Failure to Perfect Service of Summons and Complaint" (Dkt. #11).

ORDER VACATING ORDER OF DISMISSAL AND ORDER DIRECTING SERVICE

However, by <u>Friday</u>, <u>November 2</u>, <u>2007</u>, plaintiff shall serve defendant and file proof of service with the Court. Should plaintiff fail to serve defendant and file proof of service with the Court by November 2, 2007, the Court will dismiss this case under Fed. R. Civ. P. 4(m). <u>See</u> Fed. R. Civ. P. 4(m) ("If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time[.]").

DATED this 4th day of October, 2007.

MMS (asuik Robert S. Lasnik

United States District Judge